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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

R.M., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B212195 (Los Angeles County Super. Ct. No. CK63091)

ORIGINAL PROCEEDING; petition for extraordinary writ. Marilyn Martinez, Juvenile Court Referee. Petition denied.

R.M., in pro. per., for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Real Party in Interest.

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In her petition for an extraordinary writ, R.M. (Mother) challenges a November 3, 2008 order terminating reunification services with her two sons (N.F. and C.D., Jr.) and setting a permanency plan hearing for March 2, 2009. We deny the petition because substantial evidence supports the juvenile court's findings that reasonable services had been provided and there was no substantial probability that the boys would be returned to Mother in six months.

BACKGROUND

N.F., born in October 1999, and C.D., Jr., born in May 2004, were detained from Mother and placed with C.D. (Father)[1] in April 2006 after the Los Angeles County Department of Children and Family Services (DCFS) received a report that Mother used methamphetamine and left the children with the maternal great grandmother without making provisions for their care.

In May 2006, the juvenile court sustained a first amended petition alleging that the boys were dependents of the court pursuant to Welfare and Institutions Code section 300, subdivision (b) (failure to protect), based on Mother's history of drug abuse, frequent use of methamphetamine, and leaving the boys with the maternal great grandmother without making a plan for their care.[2] Mother was afforded reunification services and ordered to participate in parent education, drug rehabilitation with random drug and alcohol testing, and individual counseling to address anger management and case issues. Mother enrolled in drug rehabilitation and counseling in May 2006.

As the boys were placed with Father, who lived with his mother (paternal grandmother) in Riverside County, the case was transferred to the juvenile court in Riverside County.

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[1] C.D. was found to be the presumed father of both children, although he is not the biological father of N.F. Mother had no contact with N.F.'s biological father after N.F.'s birth.

[2] Unspecified statutory references are to the Welfare and Institutions Code.

In September 2006, when Mother was six months pregnant, she was arrested and then later convicted of burglary and possession of methamphetamine. Before her arrest, Mother used methamphetamine daily during her pregnancy. While Mother was in jail, she gave birth to a drug-free baby girl, S.M., in December 2006.[3] S.M. was declared a dependent of the juvenile court in April 2007 and placed with Father (her biological and presumed father). Mother was afforded family reunification services and ordered to participate in parenting, drug counseling and random drug testing.

Meanwhile, in November 2006, the juvenile court in Riverside County terminated its jurisdiction and entered a custody order awarding custody of the boys to Father. Because Mother failed to contact the social worker in Riverside County and to participate in court-ordered services, her reunification services were terminated in February 2007.

In March 2007, Mother was released from jail and enrolled in an inpatient drug rehabilitation program where she began having weekend overnight visits with S.M. in May 2007. While Mother was in the inpatient drug rehabilitation program, from March to September 2007, Mother participated in random drug testing and classes in sober living, parenting, domestic violence training, and relapse prevention. After Mother moved to a sober living home, the juvenile court found in September 2007 that Mother was in compliance with the case plan for S.M. Mother and S.M. lived together in the sober living home with family maintenance services from September 2007 to March 2008, when the juvenile court terminated jurisdiction as to S.M. In April 2008, Mother and S.M. began living with the maternal great grandmother.

In February 2008, Father was arrested and charged with possession of methamphetamine for sale and other related offenses. In April 2008, the juvenile court in Riverside County sustained a petition alleging that the boys were dependents of the juvenile court under section 300, subdivisions (b) and (g) (no provision for support against the biological father of N.F.). The juvenile court in Riverside County transferred the matter to Los Angeles County. In June 2008, the juvenile court in Los Angeles

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[3] S.M. is not a subject of this writ petition.

County ordered that the boys be placed with Mother under DCFS's supervision. Mother was afforded family maintenance services.

Mother was arrested for possession of stolen property in August 2008 and released. In September 2008, the boys and S.M. were detained from Mother and placed with the paternal grandmother after Mother was arrested and convicted of possession of methamphetamine. Mother, who admitted to using methamphetamine the day before her arrest, was sentenced to 32 months in prison. Also in September 2008, Father began serving a 365-day jail sentence in the Riverside County jail for possession of drugs.

On November 3, 2008, Mother, who was then in custody, appeared for a hearing on a supplemental petition (§ 387), alleging that in September 2008, Mother used and possessed methamphetamine, possessed drug paraphernalia, and was then incarcerated and unable to provide care and support for the boys. The juvenile court sustained the supplemental petition. The court found that DCFS made reasonable efforts to reunify the family, that Mother was not in compliance with the case plan, and that there was no substantial probability that the boys will be returned to Mother in six months. The court stated, "We are well beyond the 18-month date and Mother continues to be . . . in a drug-involved lifestyle. We'll set the two boys for a [section 366.26] hearing."

The court terminated reunification services. Foster care was identified as the permanent plan and a section 366.26 hearing was set for March 2, 2009. A copy of the minute order was served by mail on Mother on November 7, 2008.

On November 14, 2008, Mother's notice of intent to file a writ petition was filed with the superior court; the notice of intent was signed by Mother and dated November 10, 2008. Mother's petition, filed on December 1, 2008, alleged that the November 3, 2008 order was erroneous because she "is complying [with] court orders [and] could be released early for good time." On December 1, 2008, the clerk of our court notified the parties that the matter will be decided on its merits. DCFS filed an answer to the petition for extraordinary writ.

DISCUSSION

DCFS contends that Mother's petition should be dismissed as untimely because she was in court on November 3, 2008, and advised of her writ rights at that time and should have filed her notice of intent within seven days, or by November 10, 2008, pursuant to California Rules of Court, rule 8.450(e)(4)(A).[4] We reject DCFS's argument because the notice is timely under rule 8.450(e)(4)(E) and (e)(5).

Rule 8.450(e)(4)(E) provides: "If the order was made by a referee not acting as a temporary judge, the party has an additional 10 days to file the notice of intent as provided in rule 5.540(c)." Rule 5.540(c) provides: "An order of a referee becomes final 10 calendar days after service of a copy of the order and findings under rule 5.538, if an application for rehearing has not been made within that time or if the judge of the juvenile court has not within the 10 days ordered a rehearing on the judge's own motion under rule 5.542." Here, DCFS filed notices stating that it did not stipulate to a referee or commissioner acting as a temporary judge. Because Mother had an additional 10 days to file her notice of intent, the notice was timely filed on November 14, 2008.

Rule 8.450(e)(5) provides: "If the superior court clerk receives a notice of intent by mail from a party in a custodial institution after the time specified in (4) has expired but the envelope containing the notice of intent shows that it was mailed or delivered to custodial officials for mailing within the time specified in (4), the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received."

Although the envelope containing the notice of intent is not part of our record, we infer from the notice of intent dated November 10, 2008, that Mother delivered it to

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[4] References to a specific rule are to the California Rules of Court. Rule 8.450(e)(4) provides in pertinent part: "The notice of intent must be filed according to the following timeline requirements: [¶] (A) If the party was present at the hearing when the court ordered a hearing under . . . section 366.26, the notice of intent must be filed within 7 days after the date of the order setting the hearing."

custodial officials on that date, and the notice of intent is thus deemed timely under rule 8.450(e)(5).

We agree with DCFS that substantial evidence supports the juvenile court's order terminating reunification services and setting a permanency plan hearing.

At the time of the juvenile court's order, reunification services were limited by statute to 18 months from the date the child was originally removed from the physical custody of his or her parent. (Former § 361.5, subd. (a)(3); see now § 361.5, subd. (a)(2).) "At the 18-month stage, further services are ordinarily not an option which the court may consider. [Citations.] Mandatory services are limited to no more than 18 months. [Citation.] A court may extend the 18-month maximum for reunification efforts only under very limited circumstances, that is, when: no reunification plan was ever developed for the parent [citation]; the court finds reasonable services were not offered [citation]; or the best interests of the child would be served by a continuance (see § 352) of an 18-month review hearing [citation]." (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167, fn. omitted (*Carolyn R.*).)

"The 18-month limitation set forth in section 361.5, subdivision (a) applies to all 'court-ordered services.' (§ 361.5, subd. (a).) Nothing in the statute suggests the limitation period should be calculated separately for maintenance and reunification services." (*In re N.M.* (2003) 108 Cal.App.4th 845, 853.) Thus, both reunification services and maintenance services are "part of the continuum of child welfare services" under section 361.5. (*Carolyn R.*, *supra*, 41 Cal.App.4th at p. 165.)

Mother was afforded at least 18 months of child welfare services. She was offered reunification services from April 2006 until February 2007 (approximately 10 months) and from March to September 2007 (approximately 6 months). Mother received family maintenance services from September 2007 to March 2008 (6 months) and then from June to September 2008 (3 months). Thus, Mother was offered or received a total of approximately 25 months of child welfare services.

To support a finding of reasonable services, "the record should show that the supervising agency identified the problems leading to the loss of custody, offered

services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult . . . ." (*In re Riva M*. (1991) 235 Cal.App.3d 403, 414.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) We review a reasonable services finding for substantial evidence. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1346.) The services in which Mother participated were designed to remedy her drug use problem. Substantial evidence thus supports the court's finding that the services provided were reasonable.

Mother's reference to an anticipated early release from prison also does not establish that the juvenile court abused its discretion in failing to extend services beyond the 18-month period. In several cases, a juvenile court has extended services beyond the 18-month period, but only under extraordinary circumstances involving some external factor which prevented the parent from participating in the case plan. (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1510.) Mother's relapse into drug use involved conduct over which she had control. The juvenile court did not abuse its discretion in making the implied finding that there were no extraordinary circumstances warranting a departure from the 18-month statutory limit. (See *Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388–1389 (*Andrea L.*) [relapse into cocaine use not an extraordinary circumstance warranting extension of services].)

And even if we count only the 16 months of reunification services, and not the family maintenance services, the 18-month period would have run when Mother was incarcerated. "The reunification period is expressly not tolled by a parent's absence or incarceration. (§ 361.5, subd. (e)(1).)" (*Andrea L., supra*, 64 Cal.App.4th at p. 1388.)

DISPOSITION

The petition for an extraordinary writ is denied.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

BAUER, J.*

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* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.